THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.13884 AND 11756 OF 2005

Disposed of on 10-8-2005.

Between:

M/s Sujana Constructions…… petitioner

And

The Principal Secretary to Govt. of A.P.,

Panchayat Raj and Rural Development,

Hyderabad. ……..respondent

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COMMON ORDER:

1. These writ petitions have been filed by the petitioner with a prayer to issue a Writ of Mandamus declaring the action of the respondents in canceling finalized tenders of the petitioner and not considering the tenders submitted by the petitioner in respect of works before the respondents 3 and 4 in pursuance of the order of the 1st respondent in his memo No.655/Vig.I/2004-I, dated 26-2-2005 and the consequential notice of the 2nd respondent in his Lr.No.T1/36134/Black Listing/Sujana/2005 dated 28.5.2005 as illegal, arbitrary and violative of principles of natural justice.

2. The petitioner is a partnership firm and it is registered as a Special Class Contractor specified in bitamin ASPALT HIGHWAYS (BTAH). On noticing certain deficiencies in laying the roads, the authorities have initiated proceedings to black-list the petitioner-firm. Engineer-in-Chief, Panchayat Raj, Hyderabad issued a show cause notice to the petitioner firm. Thereupon, the petitioner firm submitted explanation to the show cause notice. Without passing final orders the respondents proceeded to implement the proposed action and therefore these writ petitions have been filed by the petitioner-firm.

3. Counter has been filed by respondents 2 and 3. It is stated in the counter affidavit that the Vigilance and Enforcement Department has conducted an enquiry on certain allegations against the petitioner-firm and observed that the Bitumen content in OGPC layer was very low and about 7 KM of the road stretch was also observed to be liable for rejection. It is further stated in the counter affidavit that the petitioners' firm executed the work BT to R/F Gubbala thanda to Ramavaram via Thettekunta Thanda in Warangal District under BABARD RIDF-VIII with inferior quality. The quality of work was so poor that the BT for entire length of 10.60 KMs was rejected except for 1.00 KM in the reach 8/0 to 9/0, the recovery proposed for bad quality of work was Rs.20.16 lakhs.

4. Heard the learned counsel appearing for the petitioner and the learned Government Pleader for Panchayat Raj and Rural Development appearing for Respondents 1 to 4.

5. Learned counsel appearing for the petitioner submits that consequent to the deficiencies pointed out by the department the petitioner firm carried out the deficiencies and completion certificate has been issued and therefore the show cause notices does not survive. He further submits that the letter dated 26.2.2005 indicates as if the petitioner-firm has been black-listed before passing final orders basing on the show cause notice. He took me to the contents of the letter dated 26.2.2005 addressed to the Engineer-in-Chief, Panchayat Raj, Hyderabad. The text of the letter reads that the Engineer-in-Chief has been directed to black list the petitioner-firm. I deem it appropriate to refer the relevant portion of the memo and it is thus:

> " In view of the above, the Engineer-in-Chief, Panchayat Raj, Hyderabad is directed to black list M/s.Sujana Constructions, Hyderabad and debar it from the participating in further contracts in the Department for not executing the contractors/works satisfactorily and is responsible for constructional defects (work rejection), the firm may be considered to be (1) disqualified, (ii) demoted or (iii) removed from the list of approved list of contractors as per Clause II (b) of G.O.Ms.No.94, Irrigation and CAD Department, dated 1.7.2003 and Clause 2 and 4 of the Annexure to the G.O.Ms.No.94, dated 1.7.2003.
>
> The action taken report may be intimated to Government immediately."

In pursuance of the directions given to the Engineer-in-Chief, a show cause notice came to be issued to the petitioner and thereupon the petitioner submitted explanation. The grievance of the petitioner is that before passing the final order, the proposed punishment is given effect and therefore it is opposed to the principles of natural justice. A procedure has been contemplated in G.O.Ms.No.94, dated 1.7.2003 for black listing a contractor. The relevant rule relating to black listing in the aforesaid Government Order reads as under:

> " 5(b) Contractor should be given an opportunity of two weeks time for offering his explanation on the proposal to black list him before taking final decision."

It is explicit from the above rule that opportunity is required to be given to the contractor before categorizing him under blacklist. The text of the letter dated 26.2.2005 which has been extracted above clearly indicate that the proposed punishment has been given effect even before the final decision is taken on considering the explanation offered by the petitioner. This amounts to pre-judging the issue.

6. In view of the above discussion, these writ petitions are disposed of directing the respondents to consider the explanation already submitted by the petitioner and pass appropriate orders and till then proposed black listing of the petitioner-firm shall not be given effect. No costs.

Dated: 10-08-2005. (B.Seshasayana Reddy,J)

Tnb

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Dated: 10-08-2005.